

BENJAMIN SAYRE.

[To accompany bill R. H. 651.]

JANUARY 9, 1857.

MR. KNOWLTON, from the Committee of Claims, made the following

**REPORT.**

*The Committee of Claimsto, whom the petition and supplemental petition of Benjamin Sayre, together with the accompanying papers, were referred, make the following report:*

The petition states that on December 18, 1832, the petitioner and Ezra Rogers, then partners, entered into an agreement with the United States, by John Milroy, superintendent of the Cumberland road in the State of Indiana, east of Indianapolis, for the construction of the bridge abutments over the east branch of White water, at Richmond, Indiana, for the particular terms and conditions of which he refers to the original written agreement on the files of this House; that before entering on the work the petitioner succeeded to all the rights of Rogers by purchase, and that the subsequent execution of the contract was carried on by, and its advantages enured to, him; that the contract was let after public advertisement by means of sealed proposals, the petitioner and Rogers being the successful bidders; but the wall by the contract having to be raised a considerable height above the river and the natural surface of the ground, it was a material element in the price as to the convenience of getting the stone on to the wall and handling them during the progress of the erection, and that this was specially provided for in the advertisement of the letting by a written notice given by Milroy, the superintendent, subjoined to the advertisement, that the filling in behind the abutments, and raising the road embankments from the river bluff, should be carried on and kept up even pace with the erection of the abutments.

The petitioner states that this was a very important condition, for it enabled him, if complied with, to haul all his stone and other materials by his own teams continually through the whole work, without rehandling from the river bluffs where they were obtained, to the very spot on the abutments where they were to be used, and that it gave also the great advantage of a plenty of room for the workmen, tools, and materials, instead of having them heaped up inconveniently on the walls and requiring the men to descend frequently, occasioning delays and interruptions to all the hands to pick out and raise the most suitable stone to go into the wall.

In order to verify the importance of this feature of the contract, the

petition refers to a subsequent agreement entered into between the United States and himself, June 18, 1834, for increasing the elevation of the abutment and wings, and which agreement is among the papers referred in this case, in which, on account of omitting, only, the stipulation in regard to filling-in behind the abutment, and without any other change in the terms, the price per perch was increased from \$4 25 to \$6.

The draft of the agreement on file, the petitioner states, was made by General Milroy, the superintendent, in his absence, and without his knowledge, and was then presented to him for signature. The petitioner observed the omission of this condition in regard to filling in behind the abutments. General Milroy then acceded to it, that it was omitted, and when the petitioner hesitated about signing it, in consequence of the omission, General Milroy replied that he was then in a hurry, but that he would supply it afterward, and that the condition should be kept. The petitioner states that he then signed the article on these assurances.

The petitioner, however, insists that the written advertisement of the superintendent, and the written bid then accepted, formed a written agreement that gained no new validity or force from being afterwards amplified into the original article on file.

The petitioner states, that under his contract he laid eighteen hundred perches of stone masonry, during the season of 1833; but in consequence of the prevalence of cholera, by frequent deaths and general alarm among his men, the progress of the work was entirely suspended at times, and its completion then prevented, though he continued present, encouraging and aiding it, at much hazard, and at great sacrifices; but, on account of his energy and good conduct, notwithstanding the delay in its execution for the reasons named, and, although the article contained a clause which enabled the superintendent to declare the contract abandoned, the superintendent did not avail himself of it; but, by express agreement, left the contract operative and of full effect, in every respect, except the time of its completion, until it was superseded by the agreement of June 18, 1834.

This subsequent agreement resulted in consequence of the difficulty of cutting down the river bluffs, from the necessity then first made known of increasing the elevation of the abutments and walls about seven feet higher than was contemplated in the original agreement, and to accomplish which it was first made necessary that some portion of the masonry already laid up should be taken down, that it might afterward be laid up more solidly. To do this before the completion of the first work, the superintendent directed, as it was his privilege to do under his first contract, a cessation of the work, and, by his direction, it continued to be suspended until the contract of June 18, 1834, was (about the 10th day of July afterwards) approved at Washington. Everything under the second contract just now alluded to has been satisfactorily adjusted.

Under the first contract the petitioner alleges the entire failure on the part of the United States to keep up the road, grade and fill in behind the abutments, according to the advertised terms; so that, instead of hauling the stone from the bluffs directly to the abutments,

and to the hands of the masons, by his own teams, and without re-handling, he was compelled, as the most practicable and expedient method, to haul them to the river at two points, each about fifteen rods from the abutments, load them into flat-boats he was compelled to construct for the purpose, float them to the abutments, and then, by means of cranes he had built, raise them on the work. This occasioned the crowding of workmen, tools, mortar, and materials on the walls in such confusion as to impede the work, besides requiring the use of extra hands at boating and at the cranes. He claims that this compelled him to the additional expense of a dollar per perch for masonry. The cost of the cranes and boats is stated at the additional sum of three hundred dollars. The entire quantity of masonry under this contract is stated at 2,478 perches, of which 1,478 perches were laid above the natural surface of the ground.

Upon General Milroy being succeeded in the superintendency by Captain C. A. Ogden, though information of this stipulation was particularly communicated to him by General Milroy, as a part of the contract, Captain Ogden declined making the compensation, for the reason only that the written article was silent in regard to it.

The petitioner further states that at the time of the suspension of his work, he had connected with the work fifteen workmen and four yoke of oxen he was compelled to keep, in order to be able to resume work when required, according to the condition of the first agreement. These were unemployed six weeks before the second agreement, at a higher price, was entered into, superseding it. He retained his workmen during this period without wages, but by paying their board, amounting to \$112. The keeping his cattle, at the same time, without any charge for work, is stated at \$48.

The petitioner makes the following summary of the further compensation he deems himself entitled to.

1,478 perches of stone masonry, at \$1.....	\$1,478 00
Constructing cranes and flat .....	300 00
Boarding fifteen hands .....	112 00
Expense of teams.....	48 00
His own time and expenses.....	105 00
	<hr/>
	2,043 00
	<hr/>

He states that he has been a practical stone mason for thirty-five years; took the job with an experience of what such work was, and with a correct judgment of what work of that character was remunerative; worked practically on it for two years; managed it with all practicable prudence and economy; expended on it \$1,200 of his own money and was left in debt. Failing to obtain estimates at the time, he was referred to the consideration of Congress. The petition is verified by the affidavit of the petitioner.

The above statement the committee believe contains a correct recital in substance of the matters of the petition.

This petition was first presented to Congress on the 1st of March, 1836, was then referred to this committee, and has been before it since

almost uninterruptedly on subsequent references. An adverse report was made on it, January 22, 1839, adopting the argument and conclusions of that report twice since. In the meantime other proofs have been added, obviating or mitigating the objections at that time taken.

It is proper at this time to remark, that of all the proofs offered to this committee, which is now large, there is none that opposes the statement of the petitioner. There is, too, that singular coherence and consistency of the proofs that implies candor and veracity on the part of all the witnesses. The duty of the committee is then limited to the inquiry whether the case of the petitioner is supported by the evidence presented by him. The original agreement between Sayre and the government, to which the committee has made reference, contains no requirement on the part of the government to fill in behind the abutments and to keep up the grade as the masonry proceeded. But it is plain that the cost of the erection of bridge abutments and wings of great height, built of finished stone of great weight and size, very much depends on the convenience of getting the materials to the very spot where they are to be used, and afterwards in the convenience of using them there; and that if they were required to be raised by machinery, and handled on the narrow top of the walls, the cost would greatly exceed that of hauling and delivering them as the wall continued to rise, at an ample spot for handling and selection to the very hands of the mason. Did the government agree to fill behind the abutments, and maintain the grade, so that Sayre could deliver and handle the materials on the spot for using them as the wall went up?

Referring to the original agreement it is found that Sayre contracted "to fill up with earth around the exterior face of the abutments and wing grades as high as the natural surface of the ground." If the filling up was to be done during the progress of the work, it was *not* to be done by Sayre, because, by his contract, his engagement is thus limited to filling up as high as the natural surface of the ground.

On referring to the original agreement of Hill, Owen, Hunt & Co., who were the grade contractors of the section of which the bridge was a part, and had the contract to do the earth embankment of that section, the following stipulation is found: "It is also agreed by and between the parties aforesaid that the contractor for the masonry of the bridge aforesaid, (Sayre,) as also the contractor of the superstructure of said bridge, each respectively shall and may, at all times during the progress of their respective contracts, transport materials for the construction of said bridge, without interruption, along any part of the road levelled by the contractors to the place where such materials may be required for use." Thus it will be seen that the government then contemplated that Sayre was to transport his materials to the place required for use, along a road levelled by the grade contractors, and gave its purpose so much importance as to have it embraced in the written contract of the grade contractors. This provision could only be of use to Sayre, and as it exists, has too much consideration and form to be treated as a mere benevolent purpose of the government, but may more reasonably be referred to the fact of a coexisting obligation on the part of the government with Sayre to have it done. This



shows what the government intended as the basis of its letting of the contract for the masonry, that the grade should be made and the filling up done as the work of the masons proceeded. What kind of letting was made, and what were its purpose and extent, are best shown by the statements of the witnesses.

For the purpose of giving further information, and for complete accuracy, the committee has subjoined to this report the testimony of the principal witnesses at large. In this connexion, they direct attention particularly to the answers to the 4th interrogatory of the first deposition (marked B) of General Milroy, superintendent; to the answers of the 2d, 3d, 5th, 6th and 7th questions of his second deposition, (marked C;) to the letter of John Frazer, United States engineer, and witness to the original contract, (marked D;) to the deposition of Harvey Lesner, inspector of masonry on the part of the United States, (marked E;) to the statement of Captain C. A. Ogden, (marked F;) to the deposition of John Erwin, a bidder at the letting, (marked G;) and to the depositions of Alexander Stokes and Abner Hunt, (marked H.)

There are other statements of these and other witnesses in corroboration of the statements already quoted, of which it is not deemed necessary to take more particular notice. From what has been referred to, it seems that the written public advertisement of the letting of this work, under the contract of the government, contained a specification that the grading and filling behind the abutments was to proceed as the masonry was raised, and at the contractor's convenience; that its object was to give facilities to the contractors, and to cheapen the work to the government; that it was done that contractors might regulate their bids accordingly, and that Sayre's bid was tendered and accepted on that condition, and that it was an element of the contract and cost as material as quarrying of the stone.

Its omission from the agreement, afterwards amplified into what we have called the original contract of the parties, is satisfactorily explained, with an agreement of the parties at this time that it should stand as a part of the contract; that it should afterwards be supplied into it, and that there should be an observance of the condition. All the subsequent work, by the supposition of the contractors and superintendent, was under the idea of its being in force; nor was it ever questioned until about the time this contract was superseded by the contract of June 18, 1834, for raising the abutments to a greater height. On this supposition Sayre frequently complained that this condition was not kept; and Milroy, on the same supposition, made unsuccessful efforts to have it complied with.

The committee thinks that there was, in the absence of this contract, already binding, a contract between the parties. The making of the written advertisement of the letting, and the subsequent acceptance of Sayre's written bid, was a complete written agreement between the parties. It was already valid and obligatory as such on both parties. Without any other agreement being written, if Sayre had refused to comply with his bid, the government could have sued him and obtained a judgment; and if, in that condition, it would have been binding on Sayre, it was at the same time binding on the government, as every contract has a mutuality of obligation.

The committee, therefore, find a complete written agreement of the parties, one of the terms of which required the government to fill in behind the abutments as the work proceeded. It does not feel called on to inquire what is the effect of its omission in the amplified agreement, holding that even there its terms may be supplied by the written advertisement, as in a court of law a memorandum of parties for a conveyance of real estate may be resorted to afterwards, when an omission is found to have occurred in filling up the deed, to show what was the agreement of the parties. This would be the governing principle in this case, if we allowed ourselves to be reached by the frigid rule of law, instead of being controlled by the broader and superior sense of equity.

There is a concurrence of the witnesses that the grading and filling up behind the abutments was not done so as to be of any service during the progress of the work, and that it was at length forbidden on Captain Ogden's succeeding to the superintendency.

The original contract provided for the completion of the work by the last day of July, 1833. During that season 1,800 perches of masonry were laid, and by the consent and encouragement and under the personal superintendence of General Milroy, the government's agent, it was continued until about the 25th day of May of the next year. Its completion within the time limited seems to have been prevented by the prevalence of the cholera, which prevented keeping workmen at employment, an unexpected difficulty in getting suitable materials, and the omission to keep up the grade to the masonry, requiring, then, other means to be provided to get the materials to the ground. No neglect is imputed to Sayre. On the other hand, General Milroy commends his enterprise and fidelity at the work. What is the effect of his failure to execute the work at the limited time?

If Sayre was prevented from executing his contract in time, from the fault of the superintendent in not keeping an agreement necessary to its progress, then Sayre stands excused for his failure, and is only required to proceed with reasonable diligence afterwards to do his work as the means are provided. But, on the supposition that the government was not in fault, that the work was not completed in the time limited, but that, by common consent, both parties, afterwards, proceeded to its execution, then the committee regards the settled rule of reason and law to be, that the contract subsists in every respect, except as to the single thing of the time of its performance, and in regard to that, the party bound to do the work is required to proceed with reasonable diligence to its execution. It is not, then, the standing privilege of either party, at any moment, to terminate the contract and avoid the obligations of its terms. In cases of law where performance is not complete in the specified time, but where it has been afterwards completed, with the consent and knowledge of both parties, the recovery is sought and obtained on the contract, alleging that the performance was to be done in a reasonable time. In this view of the case the progress of the work, after the time for the completion of it had expired, having been under the express authority and sanction of the government superintendent, the whole contract is

regarded as subsisting up to the time of its being superseded by the contract of June 18, 1834.

Great liberality has always been permitted in regard to the time of fulfilment of contracts on public works, in consideration of the singular conditions under which such work is done, and from the usual, frequent alterations, such as seem to have occurred on this job. A reference to the original contract between the present parties shows that modifications of the form and structure were at all times competent to be made by the superintendent, thus, notwithstanding the contract, leaving it wholly in him to determine the time of its completion; indeed, giving the superintendent the power of defeating its completion, if he saw fit to make capricious alterations about the time limited for its performance.

A like reference, too, shows that the time of its completion was of inconsiderable importance, as one of the stipulations gave him the privilege of declaring the contract abandoned at any time "when the work was not carried on to his entire satisfaction," which stipulation gave the government more power over the contractor, and enabled it better to hasten its completion, than to have its completion limited to a given time.

In this case, Milroy, the superintendent, did not abandon the petitioner's contract. On the contrary, he extended it by an express verbal agreement, as is shown in his testimony, and its subsequent prosecution, and the drawing of estimates were governed by its terms. The reason for the extension is stated by Milroy, in his answer to the tenth question of his second deposition.

It cannot be deemed equitable, after the government has availed itself of the obligations of his contract, that the petitioner should be denied its corresponding benefits.

It is believed, however, that another feature of the case, notwithstanding the time fixed for its performance had expired, leaves no doubt that this contract was a legal subsisting one up to the time of its being superseded. This is the contract of June 18, 1834, entered into between the same parties, for the elevation of the walls six and six-tenths feet higher than contemplated in the original agreement, and which contains the following recital: "Whereas it is necessary, in the opinion of the aforesaid John Milroy, that the walls of the bridge over the east branch of White Water, on section sixty-seven of the road, should be raised six feet and six-tenths of a foot higher than the original plan for said abutments contemplated, and the wooden scew-backs now being in the walls, and the said walls nearly ready for the superstructure, it becomes necessary," &c. This recital is a written recognition of the continuance of the contract up to that time, and estops its denial.

These several considerations are important as determining the question, whether the first contract was one continuing to operate up to the time of the ratification of the contract of June 18, 1834? For, if so, the notice given by Superintendent Milroy to Sayre in May, 1834, to cease work, was competent by the terms of the first contract. But as it was also competent for him, under the same contract, to require a resumption of work by Sayre, at any moment, Sayre was thus com-

pelled to keep his hands and teams in readiness for it, and is entitled to compensation.

With these conclusions, viz: that the contract of the parties required, on the part of the government, the grading and filling in behind the abutments as the masonry was put up, and that the direction to suspend work in May, 1834, involved expenses for which Sayre is entitled to indemnification, it remains only to allude to proofs that refer to the subject of compensation.

The quantity of stone masonry built above the natural surface of the ground under the first contract was 1,478 perches. The contract price was \$4 25 per perch. But under the second contract, by which the filling in behind the abutments was abandoned, and which is the only substantial respect in which there was any difference in the two contracts, the price was increased to six dollars per perch. Abner Hunt states the increased expense in erecting the abutments above the natural surface of the ground, in consequence of the failure of the superintendent to fill in behind the abutments with earth, as the masonry proceeded, at one dollar per perch. John Erwin, inspector of masonry, states the same at sixty-two and a half cents per perch, though from the connexion of the statement this is presumed to be intended as embracing the laying of the stone only, by means of machinery, and not to include the expense of machinery and boat, and the extra hands engaged in boating the materials to the abutments. General Milroy states the same increased expense at between one-half and one-third of the price, or from \$1 41 to \$2 12 per perch, or at an average of \$1 77 per perch. But this, it is believed by the committee, was intended to cover the cost of machinery, flat, extra hands, &c. At this estimate, the entire increased expense is stated at \$2,616 06. The committee has preferred to adopt the rate of one dollar per perch.

The suspension of the work continued for a period exceeding six weeks. There is proof of the payment of wages to but a single one of the hands who remained out of employment. But the names of fifteen persons are given who remained and were boarded by Sayre, and the testimony of Stokes is distinct, that Sayre paid their boarding, amounting to \$112. He paid \$48 also for keeping his cattle during this suspension, no charge being made in consequence of their being out of employment. Sayre's own service, being at the same time the contractor and superior workman on the job, is stated by several witnesses at \$2 50 per diem. The amount justly thought due is thus a matter of arithmetical figures.

No attention has been given here to the condition of the account under the second contract, a satisfactory settlement of it having been made at the time.

The committee has given this case a more deliberate notice, in consideration of the character of the case, and from much respect to the action of previous committees. And it is but just in this connexion to say, that adverse opinions heretofore might have been obviated by bringing forward then that full proof that is before the committee now; but it seems to the committee a claim of honest merit, long postponed, and it asks leave to bring in a bill.



## A.

*Agreement of John Milroy, superintendent, and Benjamin Sayre, dated June 18, 1834.*

Memorandum.—It is agreed by and between John Milroy, superintendent of the eastern division of the Cumberland road, in Indiana, of the one part, on and in behalf of the United States, and Benjamin Sayre, on the other part: whereas it is necessary, in the opinion of the aforesaid John Milroy, that the walls of the bridge over the east branch of White Water, on section 67 of the road, should be raised six feet and six-tenths of a foot higher than the original plan for said abutments contemplated, and the wooden skew-backs now being in the walls, and the said walls nearly ready for the reception of the superstructure, it becomes necessary by this increased height of the said walls that a portion of said walls be taken down and rebuilt. Now, this agreement witnesseth, that the said John Milroy does agree to pay the said Benjamin Sayre the sum of one dollar and twelve-and-a-half cents per perch of stone so taken down respectively; also, he, the said John Milroy, does agree to pay to the said Benjamin Sayre the sum of one dollar and twelve-and-a-half cents for each respective perch of stone so relaid. Also, it is agreed by and between the parties aforesaid, that he, the said Benjamin Sayre, is to receive the sum of six dollars for each and every perch of stone which the aforesaid walls may contain over and above the amount of stone embraced in the original plan of the said abutments. The perch of stone to consist of twenty-five cubic feet. Also, it is agreed by and between the parties aforesaid, that he, the said Benjamin Sayre, does hereby obligate himself to put up said wall so as to receive the superstructure by the 15th day of August next ensuing. As witness our hands this 18th day of June, anno Domini 1834.

JOHN MILROY. [L. S.]  
BENJAMIN SAYRE. [L. S.]

Witness present, JOHN FRAZER.

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B.

*First deposition of General John Milroy, superintendent.*

I, John Milroy, formerly superintendent of the eastern division of the Cumberland road, in answer to the following interrogatories or questions, which are as follows, on oath, give the following to each as herein stated:

Question 1. Were you the United States agent and superintendent of the eastern division of the Cumberland road at the time the stone masonry for the bridge over White Water river, on the said Cumberland road at Richmond, Wayne county, Indiana, was let and put under contract?

Answer. I was.

Question 2. Will you state in what way you managed said letting?

Answer. I caused general specifications to be posted up in the most public places for the benefit and government of bidders, setting forth the manner and form of the construction of the work, and which specifications were intended to be copied into the contract as a special condition of the same.

Question 3. Was there anything specified in the general specifications for filling up in the rear of the abutments with earth for the purpose of making the masonry less expensive to the contractor, and saving to the government?

Answer. In the first specifications set up there was not.

Question 4. Will you state whether there was, or was not, such specifications as above alluded to, and all the circumstances attending it, and the reason why it was not in the general specification?

Answer. The work was all laid off with plans and general specifications, made out sometime before the letting. Previous to the letting, it was suggested, that as it would be the business of the grading contractors to fill up the abutments to complete the sections, that it might as well be done as the masonry progressed, and would greatly facilitate the work, as the abutment had to be raised to so great a height that the stone being large might be hauled with teams on stone drags immediately along the sides of the walls, or where needed, and laid in the work without the expense of machinery and a number of extra hands, which would otherwise be necessary. Therefore, previous to the letting, (I) caused extra notice to be given or posted up that the earth should be filled in the rear of the abutments above alluded to, as the work progressed, at the expense of the government, for the purpose of saving great outlay and expense to the contractor, that the bids might be governed accordingly.

This is the substance of the specification alluded to, and had no reference to any other work to be let at that time; for this reason, that the abutments of that work were to be raised very high, and the rest was low, and the cost of the work could not be effected by such, to any amount worth noticing; therefore, was confined to that work alone, and not being among the general specifications, in filling up the contract, the clerk neglected to incorporate it therein; but filled up, as relates to general specifications, as in the rest of the contracts, and not as to that particular clause. But the whole transaction being done in good faith, had I remained as superintendent until the completion of the work, I should have felt myself bound to have made an allowance equivalent to the extra expense incurred.

I will further state, that if Samuel C. Duncan, the first contractor for grading that section had not failed on or about the time the work was ready to receive the earth, or filling, it would have been done according to the instructions he received, it is presumed, and so (I) thought until he abandoned his contract.

Question 5. Is there a copy of the above specifications alluded to in your possession?

Answer. Search has been made for the same, and neither that nor

any other copy of any specification of work under my superintendence can be found.

The foregoing is a true answer to all your questions, to the best of my knowledge.

JOHN MILROY.

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STATE OF INDIANA, *Hancock county, ss.*

Personally appeared before me, the undersigned, a justice of the peace in and for the county of Hancock, John Milroy, who deposeth and saith, that the answers given to the foregoing questions are true, to the best of his knowledge. Sworn according to law.

Given under my hand and seal the eighth day of April, A. D. 1846.

WILLIAM SEBASTIAN. [L. s.]

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STATE OF INDIANA, *Hancock county, ss.*

I, John Hager, clerk of the Hancock circuit court, do hereby certify that William Sebastian, esq., before whom the above acknowledgment seems to have been taken, was, at the time of taking the same, an acting justice of the peace, within and for said county, duly elected, commissioned, and qualified, and that full faith and credit is due and to be given to all his official acts as such.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at my office in Greenfield this [L. s.] 15th day of April, A. D. 1846.

JOHN HAGER, *Clerk.*

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C.

*Second deposition of General John Milroy, superintendent.*

STATE OF INDIANA, *Hancock county, ss.*

Deposition of General John Milroy, taken at Greenfield, in said county, before John Rariden, on the part of Benjamin Sayre and Ezra Rogers, petitioners to Congress for pay for services rendered and losses sustained as contractors on the eastern division of the Cumberland road, under the authority of the United States, in the State of Indiana.

Question 1. Were you acting as superintendent of the eastern division of the Cumberland road in Indiana at the time the grading the hills and building the bridge at the east fork of White Water was let by authority of the government of the United States?

Answer. I was the superintendent of the said eastern division of the Cumberland road, and at that time held said appointment from the proper authorities of the government of the United States, and under that authority I advertised, sold out, and entered into contract

for certain grading, bridging, &c., on said road, among which contracts entered into was that entered into by Benjamin Sayre and Ezra Rogers, for building abutments, as above stated.

Question 2. Did you not, at that letting, give notice, by posting up in writing, over your own signature, at the time and place of said letting, that the earth should be filled in the rear of the abutments as fast as the stone work should be raised by the government, for the purpose of inducing contractors to make lower bids than they otherwise would do if the work was required to be raised without filling?

Answer. The work to be let was by a printed advertisement, to which my name was prefixed as superintendent; the work and manner of performing it, as far as was practicable in such a notice, with reference to profiles prepared by my engineer, and exhibited to the inspection of all who wished to examine, with specifications of the manner in which the work was to be done. Among the specifications on that work, was, that the earth should be filled in as the abutments advanced, and the contracts made with those persons who contracted for the grading of the hills were bound by contract to fill up as the abutments advanced; but as the contractors for the grading failed in the fulfilment of their agreements, they abandoned their contracts; the cutting down of the hills proved so much harder and more difficult than could be anticipated by the best judges of such work, it was impossible to get the filling of the earth as the abutments advanced, agreeable to the specifications and fair understanding at the time of entering into contract with Benjamin Sayre and Ezra Rogers, as the grading contracts changed hands, if I recollect, one or more times before it was completed.

Question 3. Did you not let the stone work of said bridge to Benjamin Sayre and Ezra Rogers with the above understanding?

Answer. I did.

Question 4. Was the above condition complied with on the part of the government, as was stated in your specifications for filling in the rear of the abutments?

Answer. It was not; as above explained in answer to question 2.

Question 5. Why were not the above conditions inserted in the contract for building said abutments?

Answer. A full description of all the items in such contracts were but seldom entered at length. In the articles the specifications were set forth with a profile with which the contractor was mostly furnished, and a copy of the same retained in the engineer's office. Whether that was the case in this instance I do not remember. I do distinctly remember that it was fairly understood by all the bidders, or such as choose to inform themselves, that the earth was to be filled in as the abutments were to be raised, and that failure was occasioned by the failure of contractors for the cutting down or grading the hills. The first undertakers broke up; new contracts and lettings had to be had, &c.; the first lettings for the grading being somewhere between eight and twelve cents per cubic yard; the last was seventy or eighty cents per cubic yard, the precise sum not recollected. Such being the case, it was impossible for the agents of the government to comply with the conditions on their part.

Question 6. At the time of signing the contract did you not say to



Mr. Sayre that the contract was already written in the absence of Sayre, and that you were anxious to forward them on to the department by the next mail, which was about to start, since, if they were to be written over again it would cause considerable delay, and that the dirt should be filled in according to the above specification in the same manner as if it had been filled in the written contract?

Answer. I recollect that Mr. Sayre hesitated about signing the article or contract, but I do not now recollect what his reasons were, or what was said at the time.

Question 7. Did not said Sayre sign the written agreement on the condition that the above parol agreement should be complied with on the part of the government?

Answer. He did.

Question 8. Did you at any time, whilst you were acting as superintendent, declare the contract abandoned for not having it completed within the time specified in said contract?

Answer. I did not.

Question 9. Did you not extend the time for performing the contract, with the understanding that it should be prosecuted as fast as possible?

Answer. I did verbally extend the time—not fixing any time, but that he was to proceed as fast as he could.

Question 10. Why did you extend the time?

Answer. Because part of the work was delayed on account of the earth not being filled in in the back of the abutments, as agreed on, agreeable to the specifications; and, furthermore, I did believe that the work would not be executed as well by any other person without a much higher price than what he was to get as per contract.

Question 11. During the prosecution of said work did you not order said Sayre to stop further proceedings until you could make a survey and estimate of the grading of the banks of the river, to determine whether the cutting should be lighter and the bridge raised higher than was first contracted for, which would save several thousand dollars to the government?

Answer. I did.

Question 12. Did said Benjamin Sayre comply with the order?

Answer. He did.

Question 13. How long was the work suspended?

Answer. I do not remember; but long enough to make the survey and estimate, to forward the same to the Engineer's Department at Washington and receive their answer, when a new contract was entered into, and further delayed to (till) that contract was approved at Washington.

Question 14. At the time the work was suspended for the purpose of making the survey and estimate, were not the abutments nearly completed on the first contract?

Answer. They were.

Question 15. Did you not make a second contract with said Benjamin Sayre for raising the abutments higher?

Answer. I did.

Question 16. Was it not the understanding that the abutments filled, as before stated, with earth in (the) rear?

Answer. I do not recollect whether it was the understanding under the new contract or not, but think it was.

Question 17. About the time the said Benjamin Sayre had fairly commenced the second contract, did not Captain C. A. Ogden, of the United States Corps of Engineers, succeed you as superintendent?

Answer. Benjamin Sayre had commenced on his second contract, but how long or what progress he had made when C. A. Ogden superseded me as superintendent of the Cumberland road I do not know.

Question 18. Did not Captain Ogden order that the abutments should be completed under the second contract without filling in the abutments as agreed by you, and was not the filling stopped by his orders?

Answer. This question I cannot answer, as I know but little of his orders or proceedings about that work.

Question 19. How much do you consider the damage to be on each perch in consequence of not having the earth filled in rear of the abutments, as was the agreement under the first contract? under the second contract?

Answer. At this time, I cannot say what the damage on each perch could be, as I have no means of making any accurate calculation, but the damage must have been great. Mr. Sayre was under the necessity of erecting cranes, and frequent alterations with the necessary machinery, also, to supply many more hands than he would otherwise have had, had the earth been filled in the rear of the abutments. It also caused scaffolding that otherwise would not have been needed. I can only give a rough guess, but do think, after machinery became necessary to hoist the stone, (some of them in large blocks, and others small,) that it would enhance the price of the work from one third to one half. From my knowledge of that work, were I now to undertake such, I surely would make at least that difference or more.

Question 20. Was the dirt filled in the rear of the abutment according to either contract, so as to be of any service in raising the stone work?

Answer. I do not distinctly remember what the second contract was, or what was said about the filling in. I recollect going to the contractors who had the fill to make, and asking them to make said fills, but think they were not filled out. If my recollection serves me, I understood that Captain Ogden caused the filling to be discontinued (until) the abutments were finished, though I did not hear Captain Ogden say anything about it that I recollect.

Question 21. What was the actual loss of time and expense occasioned by the suspension of the first contract?

Answer. I cannot state the actual time, but, from the necessary correspondence from the time of suspending to the time of commencing, (or that he might have commenced,) there could not have been less than six weeks, or within two or three days under or over that time. What the expenses were I cannot now tell. He had a large number of hands, mason attendants, quarriers, and stone dressers, all of which must, of necessity, be suspended from their several occupations, unless otherwise employed, with teams and teamsters, &c., the cost of which I have no means of ascertaining.

Question 22. Previous to the second contract was it required to send the written agreement to Washington for the approval of the government before commencing the work?

Answer. It was agreeable to the instructions given me by the Engineer Department; all agreements and contracts were required to be forwarded to the department for their approval. This contract was an important one. It was indispensably necessary. They might have annulled said contract if they had not considered it for the best interest of the government, and myself made liable for damages.

Question. Was the said Benjamin Sayre, at the time of making the second contract, aware that it was necessary to send it to Washington for the approval of the government before commencing?

Answer. He was not to (until) after the contract was signed, and insisted on proceeding to commence immediately. He complained of much loss, &c.

Question. Did not the said Benjamin Sayre demand of you that the dirt be filled in according to the first parol agreement under the first contract?

Answer. He did frequently.

Question. Please to state whether you would have considered yourself bound, as a superintendent, to have made an allowance on the part of the government for not complying with the specifications and express understanding of filling the abutments, as has been stated in the deposition, and the reason you did not?

Answer. I did consider that I would have been bound to make him an allowance on the part of the government for not complying with the specifications; and the reason why I did not, I was superseded as superintendent of the road, when all my power ceased, and was assumed by Captain Ogden.

JOHN MILROY.

STATE OF INDIANA, *Hancock county, ss:*

Be it remembered, that on the 8th day of April, 1844, personally appeared before me, John Rariden, an acting justice of the peace in and for said county, John Milroy, who, being by me duly sworn upon his oath saith that the matters and things contained in the foregoing deposition are substantially true, in matter and fact, as he verily believes.

Given under my hand and seal this 8th day of April, 1844.

JOHN RARIDEN, [L. s.]

*Justice of the Peace.*

STATE OF INDIANA, *Hancock county, ss.*

I, John Hager, clerk of the Hancock circuit court, do hereby certify, that John Rariden, esq., whose name appears to the above certificate, was at the time of signing the same, and still is, an acting justice of the peace within and for the county of Hancock aforesaid, duly elected,

commissioned, and qualified, and that full faith and credit are due to all official acts as such.

Witness my hand, and the seal of said court, hereunto affixed, at  
[L. s.] my office, in Greenfield, this 9th day of April, 1844.

JOHN HAGER, *Clerk*.

D.

*Letter of John Frazer, United States Engineer, to Benjamin Sayre.*

PAOLI, ORANGE COUNTY, INDIANA,  
December 17, 1838.

SIR: In answer to inquiry in reference to your contract for the construction of the bridge abutments at the east fork of the White Water, on the Cumberland road, in this State, I can safely say, that when the contract was awarded to you I was the engineer in charge of the eastern division of said road, in this State, and that it was intended and understood that the rear of the abutments should be kept filled with earth as the masonry progressed; and that we considered the grading contractor bound, at all times, when directed, to keep the abutments filled to such a height as might suit convenience. And, also, that when Captain Ogden assumed the superintendence of the road, that he directed that the abutments thereafter should be carried up without filling up in the rear until the said abutments were sufficiently dry to admit of it, which order was complied with. How much stone was laid when the order was issued I cannot say, nor can I say how long you continued to lay stone after said order was issued, but I can safely say that if the filling had been kept up to suit your convenience that a saving of cost in the construction might have been effected.

I am, sir, your obedient servant,

JOHN FRAZER.

BENJAMIN SAYRE, Esq.

E.

*Deposition of Harvey Lesner, inspector of masonry.*

STATE OF INDIANA, *Henry county, ss.*

Be it remembered, that on the 8th day of April, 1844, personally appeared before me, the undersigned, an acting justice of the peace in and for the county of Henry, Harvey Lesner, who, being by me duly sworn, upon his oath deposeth and saith: That he is a stone cutter and stone layer by trade, and was employed as inspector of masonry by the United States on the east division of the Cumberland road, in Indiana, in the years 1833 and 1834, under General John Milroy, who was at that time the principal superintendent of the east division of



the Cumberland road in Indiana, about which time General Milroy let the stone work of the bridge at the east fork of White Water, in Wayne county, on the Cumberland road, to Benjamin Sayre and Ezra Rogers, with the understanding that the abutments should be filled in rear with the earth as fast as the stone work was laid up, to be done at the expense of the United States, which was not done until the work was completed. This arrangement was made in view of having the graders perform the filling of the abutments, and induce the bidders on the stone work to bid at less price per perch than they would if the work had to be carried up without filling, as the walls were nearly thirty feet in height, and required expensive machinery and a good many extra hands to raise the stone, as they were generally large; whereas, if the earth had been filled in the rear of the abutments, the stone could have been hauled immediately by the side of the walls, ready to lay, saving an expense of at least sixty-two cents for each perch laid in said walls. The said stone work was constructed by said Benjamin Sayre in a very substantial and superior style. This deponent further saith, that the stone suitable for the work was more expensive and difficult to procure than was first anticipated. This, together with the cholera, which was raging to an alarming extent, made it impossible to complete the work within the specified time, and the superintendent, General Milroy, extended the time, and never declared the contract abandoned, to my knowledge; and about the time the walls were nearly completed to receive the superstructure, the said Sayre was ordered to suspend operations until a survey could be made of the banks of the river, with a view to make the cut in the banks less, and the bridge higher, supposing it would save a large expense by such change, which hindered said Sayre and his hands and teams for some weeks, but how long precisely, or to what damage, I cannot say, but it must have been considerable. And further saith not.

HARVEY LESNER.

Subscribed and sworn to before me, the undersigned, justice of the peace of said county, this 8th day of April, 1844.

MARBLE S. CAMRON, [L. s.]

*Justice of the Peace.*

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F.

*Statement of Captain C. A. Ogden, United States Engineer.*

When Captain Ogden assumed the superintendence of the Cumberland road, in Indiana, in July, 1834, he found the abutments of the bridge over the White Water nearly completed, in conformity with a contract made on the 8th day of December, 1832.

The contractors for the grade on the east bank of the river had commenced filling in rear of the east abutment. This filling was objectionable—first, on account of the injury the masonry might sustain by being filled before the mortar was dry; and, secondly, it was

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made of an incipient limestone that was found in the excavations. The embankment that had been thus made has since been taken down, and enough earth mixed with it to insure its stability. The superintendent was informed that it was a part of the contract with Sayre that the embankment should be made as fast as the masonry progressed, but as it was not so written, he did not feel authorized to compensate him (Sayre) for any damage he might sustain from a non-compliance with this agreement. The superintendent is not prepared to say how long the work was suspended. Sayre had commenced when he arrived in Indiana, March 18, 1836.

C. A. OGDEN.

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G.

*Deposition of John Erwin.*

STATE OF INDIANA, *Wayne county, ss:*

Before me, James W. Green, a notary public duly appointed and qualified, personally appeared John Erwin, of said county, and after being by me duly affirmed, deposes and says: That he, the deponent, was one of the bidders for the construction of the bridge over the White Water river, on the east division of the Cumberland road, in Wayne county, and State of Indiana, near Richmond, some time, as the deponent believes, in the year 1832; and that one of the specifications which particularly governed the prices of construction, set forth that the earth should be filled in rear of the abutments and wings of said bridge as fast as the walls were raised, so that the stone could be hauled near the work, and thereby save a heavy expense, which would otherwise occur, provided the filling was not done as was *bona fide* the agreement. The deponent further says, that part of the specifications touching the filling in rear of the abutments was not done so as to be of any service to the contractor, Benjamin Sayre, during the completion of said bridge; and that he, the deponent, recollects of said contractor complaining, during the building of said bridge, that said earth was not filled in according to contract on the part of the United States; and has also since heard the engineer say that it was a part of the contract that the earth should have been filled in as aforesaid, and it ought to have been embraced in the contract, but that it was an omission or oversight. And further the deponent saith not.

JOHN ERWIN.

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STATE OF INDIANA, *Wayne county, ss:*

Be it remembered, that on the 8th day of December, 1838, personally came before me, James W. Green, notary public, the within named John Erwin, of the county and State aforesaid, being of lawful age, when he was duly sworn by me to tell the truth, the whole truth, and nothing but the truth—said within deposition being writ-

ten by me and afterwards subscribed by said John Erwin, after being duly sworn as aforesaid.

In witness whereof, I have hereunto set my hand and notarial seal [L. s.] of office, this the 8th day of December, 1838.

JAMES W. GREEN, *Notary Public*.

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H.

*Depositions of witnesses, taken in a claim of Benjamin Sayre against the United States.*

Alexander Stokes, of the borough of Richmond, county of Wayne, and State of Indiana, of lawful age, being first duly affirmed, deposes and says: That he was employed by Colonel Benjamin Sayre to keep his books, during the summer of 1834, whilst the said Sayre was constructing the abutments of the bridge over the east branch of the White Water river, on the eastern division of the Cumberland road, in the State of Indiana, which was then under the superintendence of General John Milroy. That this deponent recollects distinctly that said Milroy came to Richmond, and ordered Colonel Sayre to stop the work on the ground, as he then alleged, that it was not certain whether the bridge was to be raised higher or not, and he could not determine the question until he had sent to the War Department at Washington. But it has been so long since, that he cannot recollect the precise day on which the order was given and the work stopped. He, however, states positively that it did not vary a week from the twenty-fifth day of May, A. D. 1834; and to the best of his recollection the order from General Milroy for the recommencement of the work was given, and the work was again commenced, about the tenth day of July, 1834, though it may have been several days thereafter. He states, positively, that the work was suspended at least forty days by order of said Milroy. That said Sayre had employed at the time the work was suspended about thirty hands, among them were eight or ten stone cutters and masons, and six or seven laborers, which he wished to retain, as they were excellent hands, and he was expecting in a short time to recommence the work; and fearing that if they were once dispersed it would be extremely difficult to procure others, agreed with some of them to continue their wages, and with all of them to pay their board. That the following named persons accordingly did remain, and were boarded at his expense, viz: Newton Silsbee, Israel Smith, Samuel Sanders, John Black, Samuel Black, Smith Lane, John Sheppard, John Coogle, Francis Hiteman, George Fritz, Wyatt Saunders, John Reed, Samuel Little, and James McRay, and that their board, at that time, cost said Sayre, for each of them, one dollar and twenty-five cents per week. At the time the work was suspended as aforesaid, said Sayre had four yoke of oxen, which he used for hauling stone from the stone yard, adjoining the work, on to the abutments; and as said Sayre had previously contracted with other persons to deliver the stone from the quarry at the yard, he had no employment for his oxen,

and they were idle during the suspension of the work, which was, as stated before, at least forty days. That said Sayre was unemployed during the suspension of said work; and although this deponent is not particularly acquainted with the wages which a good mason and builder should receive, yet he would suppose that the charge which Colonel Sayre has made, of two dollars and fifty cents a day, is reasonable. That the men whose names are mentioned above were persons, the most of whom came to Richmond with said Sayre, when he took the contract on said bridge. And when General Milroy was superseded by Captain C. A. Ogden, the present superintendent, and the contract given up, the hands dispersed, and not one of the above-mentioned persons now reside in this vicinity, and the residence of nearly all of them is not known to this deponent. He therefore judges it would be extremely difficult to procure their testimony. And further saith not.

ALEXANDER STOKES.

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STATE OF INDIANA, *Wayne county, ss:*

I, James W. Borden, a notary public, dwelling in the borough of Richmond, county of Wayne, and State of Indiana, duly appointed and qualified, and by the laws of said State authorized to administer oaths and affirmations, and take and receive depositions, &c., do hereby certify that the above named Alexander Stokes, after being by me duly affirmed, saith that the above deposition, to which he hath subscribed his name, is the truth, the whole truth, and nothing but the truth.

In testimony whereof, I have hereunto set my hand and notorial seal of office, to serve and avail as occasion shall or may require, this the 16th day of February, A. D. 1838.

JAMES W. BORDEN, *N. P.*

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Benoni Newby, of the borough of Richmond, county of Wayne, and State of Indiana, of lawful age, and being first duly affirmed, deposes and says: That he was employed in hauling stone and other materials for the bridge over the east branch of the White Water river, on the eastern division of the Cumberland road, in Indiana, which was then under the superintendence of General John Milroy, from its commencement to its completion; and that this deponent distinctly recollects that Colonel Sayre was ordered by General Milroy to suspend the work sometime in May, 1834, (he, General Milroy, supposing, though not certain, that the bridge, and, consequently, the abutments, would be raised to save the expense of cutting down the hills on either side of the river, thereby saving to the United States several thousand dollars,) in order to save as much expense as possible in taking down the walls, to remove the timbers, (commonly called skewbacks,) which



were already placed in the walls, to receive the thrust and footing of the arch timbers, which would, of necessity, have to be raised as much higher as the walls were raised. At which time, as I understood, General Milroy wrote to the War Department at Washington, and in about three weeks orders came to raise the abutments higher, when a new contract was entered into between General Milroy and Colonel Sayre for raising the abutments about eight feet higher, which contract was sent to the War Department for approval, and returned to General Milroy at Greenfield, Indiana, with orders to proceed with the work; after which Colonel Sayre received orders to go on with the work, which was at least six weeks from the time the work was suspended. Said Newby also distinctly recollects that the abutments were nearly ready to receive the superstructure, and all the materials were contracted for to be delivered by Abner Hunt and Andrew Ferguson, and were nearly all delivered, to finish up the first contract, and in consequence of this, the said Sayre was idle himself, and his teams, during the time of the suspension as above stated; and also that the said Newby heard said Sayre make an offer to some of the masons and laborers to pay them a certain price and board them—the amount I do not recollect—rather than have them leave, as he expected to recommence as soon as returns could be received from Washington. The names of the men I cannot recollect, except the following, viz: Newton Silsbee, Israel Smith, Samuel Sanders, John Black, Samuel Black, Smith Lane, John Sheppard, John Coogle, Francis Hiteman, George Fritz, Wyatt Sanders, and two or three others that I cannot recollect. Some of these men were sometimes at work about in places for themselves, but were to have their board free until the work recommenced, and were actually boarded by said Sayre at his own expense. Said Newby also states that the common price of boarding was from one dollar and fifty to one dollar and seventy-five cents per week; and that it was worth two dollars per week to keep each yoke of oxen, as he was in the habit of keeping oxen for some of the contractors at that time, and that he could not afford to do it at a less price, as feed was scarce and difficult to procure that season. And the said Newby further states, that he believes two dollars and fifty cents per day, the amount charged by said Sayre for his lost time, is a reasonable charge. And further saith not.

BENONI NEWBY.

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STATE OF INDIANA, *Wayne county*, ss:

I, James W. Borden, a notary public, dwelling in the borough of Richmond, county of Wayne, and State of Indiana, duly appointed and qualified, and by the laws of said State authorized, to administer oaths and affirmations, and take and receive depositions, &c., do hereby certify that the abovenamed Benoni Newby, after being by me duly affirmed, saith that the above deposition, to which he has subscribed his name, is the truth, the whole truth, and nothing but the truth.

In testimony whereof, I have hereunto set my hand and notarial seal of office, to serve and avail as occasion may require, this the  
[L. s.] 16th day of February, A. D. 1838.

JAMES W. BORDEN, N. P.

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Abner Hunt, of the borough of Richmond, county of Wayne, and State of Indiana, of lawful age, being first duly affirmed, deposes and says: That he was a contractor on the east division of the Cumberland road, in the State of Indiana, and was one of the contractors named in the contract of Robert Hill, Benjamin Hill, William Owens, William Thistlethwait, and Abner Hunt, for the grading of that part of the Cumberland road connected by the bridge over the east branch of White Water; and I was also bound to Colonel Sayre to deliver the stone for the abutments of the aforesaid bridge, to the amount of 1,000 perches, and that Andrew Ferguson was bound to furnish the balance of the stone to complete the first contract; and I also distinctly recollect that at the time the work was suspended by General Milroy, it was nearly ready to receive the superstructure, and that there was a sufficient quantity of stone delivered nearly to complete the first contract at the time of its suspension; and in consequence of this, the said Sayre and his teams were idle during the time, which was from some time in the latter part of May until about the first of July, 1834. And the said Hunt distinctly recollects that the said Sayre employed on the said abutments an average of thirty hands, and that when the work was suspended, had agreed to board the hands that would stay and be ready to commence as soon as he should receive orders from the suprintendent; during which suspension he boarded at his own expense, as they, the following persons, stated to me, to wit: Israel Smith, Newton Silsbee, John Black, Samuel Black, Smith Lane, John Sheppard, John Coogle, Francis Hiteman, John Reed, James McRay, George Fritz, Wyatt Sanders, Harmon Fisher, Samuel Sanders, and Samuel Little; the balance of the hands generally had families and returned home. Said Hunt also states that the common price of boarding at that time was from one dollar fifty to one dollar seventy-five (cents) per week; and that it was worth two dollars per week to keep each yoke of oxen, as the said Hunt had oxen of his own, and also kept those belonging to other contractors at that time; and that he could not afford to do it at less price, as feed was scarce and difficult to be procured that season.

Said Hunt further states that the said Sayre called on him and the company above named for grading said road, to fill up in rear of the abutments as fast as the walls were raised, which we supposed we were not bound to do, only as it suited our convenience; but eventually General Milroy came and ordered us positively to do so, stating to us that he was bound to have the walls embanked with earth in the rear as fast as the walls were raised, and that we, the said company, were bound to follow his instructions in the manner in which the embankment should be made; and we accordingly commenced the above re-

quirement, when about that time Captain C. A. Ogden arrived, which, I think, was some time in July, 1834, when he, Captain Ogden, ordered that the walls should be completed without filling with earth in the rear, in order that the walls should become as dry as possible before the earth was placed against them. Said Hunt further states that neither of the abutments were filled in the rear until after the superstructure was placed upon the abutments. Said Hunt further states that he is in the habit of building and handling stone, and that he would make a difference of one dollar per perch more at the above named abutments, than if it had been filled in the rear as fast as the walls were raised. Said Hunt further states that Israel Smith, the foreman of the work, told him that he, Smith, was paid for the time of the suspension of the work, or he would not have staid; and that, on account of not earning anything for said Sayre during the time the work was suspended, he made a small deduction, and that said Sayre paid him one dollar fifty per day, and boarded him at the same time; and the said Hunt further states that he believes two dollars and fifty cents per day, the amount charged by said Sayre for his lost time, is a reasonable charge. And further saith not.

ABNER HUNT.

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STATE OF INDIANA, *Wayne county, ss.*

I, James W. Borden, a notary public, dwelling in the borough of Richmond, county of Wayne, and State of Indiana, duly appointed and qualified, and by the laws of this State authorized, to administer oaths and affirmations, and take and receive depositions, &c., do hereby certify that the above named Abner Hunt, after being duly affirmed by me, saith that the above deposition, to which he has subscribed his name, is the truth, the whole truth, and nothing but the truth.

In testimony whereof, I have hereunto set my hand and notarial seal of office, to serve and avail as occasion shall or may require, this the 16th day of February, A. D. 1838.

JAMES W. BORDEN,  
*Notary Public.*

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I.

*Extract of a letter of General John Milroy to Hon. Elisha Whittlesey, chairman of the Committee of Claims, dated Greenfield, Indiana, February 23, 1838.*

Captain Ogden superseded me some time near the latter end of July, 1834.

There was a contract made with Robert Hill and others for excavating the hills on each side of the bridge. Said Hill & Co. were to fill in the abutments as they were raised, by which means the abutments could be raised at a much less expense than if not filled in. The company did neglect for a time to make the fill required, and on

being informed of the same went to Richmond for the purpose of seeing them, after which they commenced the fill. I will further state, that such was the size of the stones to be employed, the manner of dressing them, and the extreme small quantity of mortar to be used in said work agreeable to contract and actually complied with, that filling in or backing up the abutments and walls with earth could not in any degree affect the work as to durability or otherwise, and absolutely advantageous to the workmen.

I would suppose the time he was forced to suspend work on account of the second contract may have been five or six weeks. After entering into the second contract he expressed a desire to go to work the next day, which I would not allow of until such time as it would be known whether the contract would be approved of or not, at which Mr. Sayre complained very much; said his hands would be all let idle, which I presume was the case; he had several teams of oxen, &c. I further know that it was a difficult matter to get hands to work at that place, on account of sickness, particularly cholera. I presume if he had dispersed his hands, it would have been difficult to have collected enough to have proceeded with his work without much loss of time.

You also ask if Mr. Sayre had no other work for his hands and teams from the time he made the new contract until he commenced, or did they disperse to their homes?

These are things I do not know. I know of no other work he had for them, and many of his hands were transient, and if dispersed would not return again. I do not recollect that any agreement was made for payment for suspension of the work, or the hands let idle. He did complain of the damage it would be to him, but no particular agreement was made. I always considered the United States bound by all means to make good to contractors any loss by delays or changes made in the work; but changes of superintendents or managers changes the character of things so that justice cannot at all times be done.

Captain Ogden ordered the wooden skewbacks to be dispensed with, and stone prepared to supply their place, at considerable expense to the contractor, but greatly improving the work, both in appearance and durability.

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K.

*Letter of General John Milroy to Benjamin Sayre.*

GREENFIELD, January 31, 1835.

SIR: You wish me to state distinctly what was the understanding more than that contained or expressed in the article of contract, and how far any verbal contract was considered binding.

It has ever been an invariable rule with me, as superintendent of the Cumberland road in Indiana, in any verbal agreement with contractors, strictly to adhere and comply with and observe the fulfilment of any such verbal contract or agreement the same as if written.

It was distinctly understood at the time of entering into articles with you for the construction of the abutments of the bridge at the east branch of White Water, section sixty-seven, eastern division of the Cumberland road, that I was to cause the grading contractors to fill up the earth in the rear of the abutments as the work progressed, so as to enable you to build the same at a much less expense than you could do if such fill were not made, and did call on the grading contractors to fulfil that part of their contract with them, as well as with you, which they had, in consequence of said call, commenced previous to my being superseded by Captain Ogden in the superintendency, &c.

From the very large blocks, and the size of the stones generally employed in that structure, which was expressed in the contract, and actually used in said abutments, with the manner of dressing \* \* with the small quantity of mortar used it was then \* \* , (and I still believe,) that the filling in the rear of the abutments could not in any sensible degree affect the durability of the structure. And had not your first contract been changed, (which was done at my suggestion and request,) and much time lost, you could have completed your contract within the time specified. And further, after the first alteration, and previous to the arrival of Captain Ogden, your progress with the work was such as led to the belief that you would have been able to have completed your second contract agreeable to the stipulations, had not Captain Ogden ordered other alterations to be made in the work; and though the alterations ordered by Captain Ogden were of a judicious kind, and much improved the beauty and durability of the work, such have been the consequences, that you have suffered much loss in such change; you have not been compensated in your labor, which agreeable to justice you ought to be, as the work is executed in a manner and style inferior to none of the kind for beauty and durability, and neatness of work generally.

What amount of loss you have sustained from the sundry changes, and in not having the abutments filled in the rear with earth as per agreement, I am not able to state; but from the statement you have exhibited, your charges seem to be reasonable.

I presume that should the department not feel authorized to grant you relief, that the justice of Congress will do you that justice that may not be in the power of the Engineer Department to render.

With much esteem, your obedient servant,

JOHN MILROY.

Colonel BENJAMIN SAYRE.

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L.

*Statement by Hon. D. P. Holloway.*

Section sixty-seven of the Cumberland road, east of Indianapolis, included the bridge at Richmond, my place of residence.

Colonel Ben. Sayre was contractor for building the abutments of the said bridge over White Water river. I was frequently present



during the progress of the work. The contractor prosecuted it with energy until the breaking out of the cholera in Richmond, which first occurred among the workmen on the road. The cholera prevailed to such an extent that the citizens generally were unable to continue their regular business. About ten or fifteen rods below the site of the bridge, there is a mill-dam, causing the water to back up the stream about the same distance above the bridge, perhaps further, making the water from four to five feet deep just below the dam, and about thirty rods above the bridge the stream is easily forded.

I heard frequent complaints by the contractor at the delay and inconvenience he was subject to, from the fact that the fill was not made as fast as the stone was laid up, requiring him to bring the stone in a boat and hoist the stone to the walls by cranes, the expense of erecting which, and the building of the boat, must have been from three to four hundred dollars. Had the fill been made simultaneously with the abutments, the stone might have been handed on wagons to the abutments.

From frequent conversations with Mr. Sayre, I learned that he expected additional compensation for the manner in which he was compelled to prosecute the work. He was an energetic, industrious man, and a good practical workman. The general belief in the community was, that Colonel Sayre lost money by the contract, not from any delinquency on his part, but from the neglect of the contractors to make the fill in time.

I have read the petition of Colonel Sayre, presented to the House of Representatives, and find the character of the ground and work correctly described.